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MOVANT'S COUNSEL IS DIRECTED
 TO SERVE A COPY OF THIS ^{05/1} November 1, 2005
 ON ALL PARTIES UPON RECEIPT

VIA FACSIMILE

Honorable Robert M. Levy
 United States Magistrate Judge
 United States District Court for the
 Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, New York 11201

*Application granted.
 The proposed revised
 discovery deadlines and briefing
 schedule are approved.
 SO ORDERED*

Re: James Boyd, et al., v. Interstate Brands Corp., 00 Civ. 2249 (JG)(RML)

s/Robert Levy

11/4/05

Dear Judge Levy:

We represent the plaintiffs in the above-referenced action. We are writing with the consent of counsel for defendant Interstate Brands Corporation ("IBC") to respectfully request the Court's approval of an adjournment of the deadlines for completing class certification discovery and for briefing the class certification motion. We make this request for the following reasons.

On September 22, 2004, defendant IBC filed a voluntary petition in bankruptcy pursuant to Chapter 11 of the United States Bankruptcy Code. Pursuant to 11 U.S.C. § 362(a), IBC's bankruptcy filing automatically imposed a stay of all proceedings in this action. On November 24, 2004, plaintiffs filed a motion with the Bankruptcy Court for an order lifting the automatic stay to permit the instant action to proceed. On January 18, 2005, plaintiffs and IBC entered into a stipulation lifting the automatic stay for the "sole and limited purposes of a motion and decision regarding class certification" in this action. The Bankruptcy Court approved the stipulation on January 25, 2005.

On June 30, 2005, the parties submitted a Joint Status Report, which described the status of class certification discovery, identified unresolved issues between the parties and proposed a class certification motion briefing schedule. The Joint Status Report stated that the parties had

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completed all depositions relevant to class certification, except for the continuation of two depositions.¹ The Joint Status Report also proposed a class certification motion briefing schedule that required the motion to be filed on February 13, 2006 and fully briefed by May 9, 2006, which includes defendant filing a sur-reply brief on that date.

Since the submission of the Joint Status Report to the Court, counsel for the parties have agreed that IBC will produce certain personnel information from defendant's computer data base for review by plaintiffs' expert and counsel. Certain issues relating to the scope of the information to be produced from the computer data base arose which delayed the production of the requested computerized data. Those issues have been resolved by the parties, but certain technical problems arose concerning the extraction of data from defendant's computer system. Consequently, defendant now anticipates producing the requested information to plaintiffs by November 11. Upon receipt of the computer data base discovery, plaintiffs' expert will require time to complete his analysis and prepare his expert report. Consequently, the requested adjournment of the deadlines for completing class certification discovery and for briefing the class certification motion is necessary.

Also, plaintiffs and IBC are continuing to negotiate IBC's production of documents, subject to counsel reaching agreement on the process and protection of confidentiality and/or agreement on the terms of an amended Confidentiality Stipulation, from the personnel files of certain of defendant's General Managers.

As the parties advised the Court in the June 30, 2005 status report letter, prior to submission of the class certification motion, the parties need to conclude their discovery and respective analysis of the discovery produced in this action, and to conduct expert witness discovery, including the exchange of expert witness reports and expert witness depositions. The parties also have unresolved issues related to defendant's claims concerning the adequacy of plaintiffs' responses to certain discovery requests and compliance with the Court's prior discovery rulings, as well as the deposition of plaintiffs regarding supplemental discovery

¹ IBC has requested an additional day to complete the deposition of named plaintiff James Boyd, and the parties are in the process of scheduling that deposition date. Plaintiffs have requested that IBC produce its General Manager James Forbes for an additional half-day of deposition. IBC has not agreed to that request. The parties continue to attempt to resolve this matter, but, if they are unable to do so, will seek the Court's intervention. Defendant also has an unresolved issue regarding the deposition of plaintiffs regarding supplemental discovery responses and denials of admission requests. Plaintiffs oppose any additional depositions of plaintiffs.

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responses and denials of admission requests. Defendant also intends to file a motion for partial summary judgment on certain claims by the named plaintiffs.

For the foregoing reasons, the parties require additional time to complete discovery and brief the motion for class certification. Accordingly, the parties propose the following schedule:

2/1/06: Plaintiffs' expert witness report to be served

4/11/06: Defendant's expert witness' report to be served

5/12/06: Class certification motion.

6/28/06: Class certification opposition

7/25/06: Class certification reply

8/9/06: Defendant's sur-reply.

Defendant will have the opportunity to depose plaintiffs' expert between February 1, 2006 and April 11, 2006 and plaintiffs will have the opportunity to depose defendant's expert between April 11, 2006 and June 12, 2006. The parties have agreed to use their best efforts to insure that these depositions are scheduled well in advance of the respective deadlines.

The Court's considerations are appreciated.

Respectfully submitted,

BROACH & STULBERG, LLP

By: 

David C. Sapp (DS5781)

cc: Brian Finucane, Esq. (via facsimile and first-class mail)
Mark Stites, Esq. (via facsimile and first-class mail)

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FAX MESSAGE COVER SHEET

DATE: November 1, 2005

TO: Honorable Robert M. Levy
 Unites States Magistrate Judge
 United States District Court
 225 Cadman Plaza East
 Brooklyn, New York 11201
 FAX No.: (718) 260-2647 TEL No.: (718) 260-2340

FROM: David C. Sapp, Esq.
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RE: James Boyd, et al., v. Interstate Brands Corp.,
00 Civ. 2249 (JG) (RML)

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